



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

January 22, 1960

Honorable James H. Doherty
County Attorney
San Augustine, Texas

Opinion No. WW 785

Re: Whether the County Judge
or District Judge appoints
Special Commissioners and
renders Judgments in Eminent
Domain Proceedings
in San Augustine and Sabine
Counties.

Dear Mr. Doherty:

We have your letter in which you request an opinion as follows:

"Under S.B. No. 19, 56th Legislature, 2nd Called Session, V.A.C.S. Art. 1970-310, concerning eminent domain procedures, does the county judge or the district judge make the appointment of the special commissioners in condemnation matters pertaining to the state highways, and if the county judge makes such appointment, is the final decision of such commissioners, under existing law, made the judgment of the county or the district court? Stated another way, is the petition or statement in writing seeking the appointment of such a board and the consequent condemnation of the right-of-way, filed with the county or the district judge?"

The above mentioned act is also found at Page 90 of the Acts of the Second Called Session of the 56th Legislature (1959), the pertinent provisions of which read as follows:

"Section 1. The county courts of the Counties of Sabine and San Augustine shall retain and continue to have and exercise the general criminal jurisdiction, both original and appellate, and the general jurisdiction of probate courts, and all jurisdiction other than in civil matters, including eminent domain jurisdiction of which is here conferred on the district court for said counties, now or hereinafter conferred upon such county courts by the Constitution and laws of the state, and shall retain all jurisdiction and power to issue writs necessary to the enforcement of their jurisdiction,

and to punish contempt; but said county courts shall have no civil jurisdiction, except as to final judgments referred to in Section 2 hereof.

"Section 2. The district court of the First Judicial District having jurisdiction in said Counties of Sabine and San Augustine shall have and exercise jurisdiction in matters of eminent domain and in all other matters and cases of a civil nature, whether the same be of original jurisdiction or of appellate jurisdiction, over which, by the General Laws of the State of Texas now existing and hereinafter enacted, the county courts of said counties would have had jurisdiction, . . ."

You state that since the above act provides only for a transfer of the jurisdiction of the County Court and not of the County Judge, you have doubt as to whether the District Judge has authority to make the appointment of the special commissioners. We presume that you have reference to the general law (Art. 3264 (2) R.C.S.) providing for filing eminent domain proceedings with, and appointment of special commissioners by, the county judge. You also state that in all the acts you have examined which transfer eminent domain proceedings from a county court to another court, you find that both the jurisdiction of the county judge and that of the county court are transferred.

The case of City of Dallas v. Johnson, 54 S.W. (2d) 1024 (Dallas C.C.A.; 1932) involved the question raised by you, the specific question there under review being whether the Judge of the County Court at Law No. 2 in Dallas County had the authority to appoint special commissioners in condemnation proceedings, the contention being made that the exercise of such power rested alone in the county judge. The Court overruled this contention and held that the grant of jurisdiction over eminent domain proceedings to the County Court at Law included authority in the Judge of that Court to appoint special commissioners and said:

"It appears, therefore, that the county court of Dallas county, the county court of Dallas county at law No. 1, and the county court of Dallas county at law No. 2 have concurrent jurisdiction over all matters that are prescribed by article 1970--3, as the jurisdiction of the county court at law No. 1. This grant of jurisdiction includes the specific matter under review."

In the later case of Miers v. Housing Authority of City of Dallas, 266 S.W. 2nd 487, (1954), before the same Court of Civil Appeals, the question was raised that the Judge of the County

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Court at Law No. 1 had no jurisdiction to try the case because he was not the County Judge. The Court disposed of this question by one short paragraph reading as follows:

"Arts. 1970--3, 1970--4, 1970--16, have been interpreted to mean that the County Courts of Dallas County at Law Nos. 1 and 2 have jurisdiction to try condemnation suits. City of Dallas v. Johnson, Tex.-Civ.App., 54 S.W.2d 1024, at page 1028. We overrule appellant's point one."

We also call attention to the emergency clause of the act in question which recites the fact that the judges of the county courts of the two counties of Sabine and San Augustine are burdened with business including eminent domain proceedings.

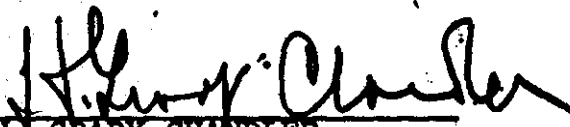
You are advised that in our opinion the District Court of Sabine and San Augustine Counties, and the Judge thereof, has complete jurisdiction over eminent domain proceedings in said counties. Therefore, the petitions or statements in condemnation should be filed with, and the special commissioners appointed by, said judge, and the award of the commissioners, in the absence of objections, should be made the judgment of the District Court.

SUMMARY

Under Chapter 7, Acts of the Second Called Session of the 56th Legislature, 1959, (V.A.C.S. Art. 1970-310) in Sabine and San Augustine Counties, petitions or statements in eminent domain proceedings are to be filed with, and appointment of special commissioners are to be made by, the District Judge, and the award of the special commissioners, in the absence of objections, is to be made the judgment of the District Court.

Yours very truly,

WILL WILSON
Attorney General

By 
H. GRADY CHANDLER
Assistant

HGC:mh

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APPROVED:

OPINION COMMITTEE:
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Donald Bernard
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REVIEWED FOR THE ATTORNEY GENERAL
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